

IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MISSOURI

In re:

Farrahi and Associates, LLC,  
Debtor.  
  
9091 State Line Road  
Kansas City, Missouri 64114  
EIN: 43-1892176

Case No.: 10-45474  
Chapter: 11

**MOTION FOR AUTHORIZATION  
TO USE CASH COLLATERAL**

COMES NOW Farrahi and Associates, LLC, debtor-in-possession (“Debtor”), by and through its undersigned counsel of record, and for its Motion Seeking Authorization to Use Cash Collateral, respectfully states as follows:

**BACKGROUND**

1. Debtor filed its Voluntary Petition for Relief under Chapter 11 of the United States Bankruptcy Code on October 13, 2010, and since such date, has continued in possession of its property and operated its business as a debtor-in-possession.

2. Debtor is a Missouri Limited Liability Company that is a single-asset owner of an office building with two (2) tenants. The Debtor’s commercial real property is located at 9091 State Line Road, Kansas City, Missouri 64114 (the “Premises”).

3. The Debtor and Great Western Bank (“GWB”) executed loan number 13320010674 in the amount of \$1,050,000.00 (“Loan”) on or about July 19, 2007, as it relates to the Premises. Attached herein as Exhibit “A” and incorporated by this reference is a copy of the Promissory Note as it relates to the loan.

4. GWB holds a valid and perfected security interest in the following property of the Debtor, exclusive of rent (“Collateral”), concerning the Loan:

All inventory, chattel paper, accounts, equipment, general intangibles, fixtures, and rent further described in a commercial security agreement dated July 19, 2007.

Attached herein as Exhibit “B” and incorporated by this reference is a copy of the Commercial Security Agreement.

5. GWB holds a Deed of Trust dated July 19, 2007, with a face value of \$1,050,000.00, and recorded with Jackson County, Missouri, instrument number 2007E0107593, on or about August 15, 2007, concerning the Loan and as it relates to the Premises. Attached herein as Exhibit “C” and incorporated by this reference is a copy of the Deed of Trust.

6. Further, GWB is the holder of an Assignment of Rents dated July 19, 2007 (the “Assignment”), with a face value of \$1,050,000.00, and recorded with Jackson County Missouri, instrument number 2007E0107594, on or about August 15, 2007, concerning the Loan and as it relates to the Premises. Attached herein as Exhibit “D” and incorporated by this reference is a copy of the Assignment of Rents.

7. As of the filing date, Debtor was indebted to (and continues to be so indebted) GWB in the approximate amount of \$1,113,492.99 (the “GWB Indebtedness”). The value of the Premises and of the Collateral totals \$2,000,000.00.

**RELIEF REQUESTED**

**A. Authorization for Debtor to Use Cash Collateral in the Form of Rent Payments**

8. The Debtor desires to use the rent it receives to pay expenses related to operation of the Premises, which include payment of real estate taxes, repair and maintenance, and utilities.

Such payments will help ensure that the value of GWB's interest in the Premises does not decline.

9. GWB has not exercised its rights under the Assignment of Rent clause pursuant to the Assignment, therefore the *rent* received by the Debtor is considered cash collateral as defined by section 363(a) of the United States Bankruptcy Code.

10. While GWB has a security interest in post-petition rent that the estate receives as provided by 11 U.S.C. § 552(b), GWB's interest in property does not include an immediate right to possession of collateral – the rent. United Savings Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 365 (1988).

11. Section 361 of the United States Bankruptcy Code provides a *non-exhaustive* list of examples of adequate protection when a debtor desires to use cash collateral. Importantly, 11 U.S.C. § 361(3) allows courts to fashion other forms of adequate protection. See In re Prime, Inc., 15 B.R. 216 (W.D. Mo. 1981).

12. GWB is entitled to adequate protection to the extent the value of the property securing its claim diminishes. United Savings Ass'n of Tex., 484 U.S. at 365 see In re Megan-Racine Assocs., Inc., 202 B.R. 660, 663 (N.D. NY 1996); see also In re Gallegos Research Group, Corp., 193 B.R. 577, 584 (D. Colorado 1995).

13. Again, the Debtor is indebted to GWB in the approximate amount of \$1,113,492.99, and the value of the Premises and of the Collateral totals \$2,000,000.00 – an \$886,507.10 equity cushion exists. Therefore, GWB is adequately protected.

14. The Debtor has no source of income other than from the operation of the Premises, which involves the collection of rent. If the Debtor is not permitted to use cash collateral in the ordinary course of its business, the Debtor will be unable to pay its counsel, and

other business expenses, which include paying real estate taxes, utilities, and maintenance. Such prohibition will effectively preclude further operation of the debtor-in-possession and cause imminent and irreparable harm to the Debtor's estate. Thus, the Debtor seeks Court permission to use cash collateral to continue its business operations pursuant to the itemized Budget attached hereto and incorporated herein as Exhibit "E."

15. No committee of creditors has yet been appointed or designated in this case. The debtor intends to request this Court enter an Order pursuant to 11 U.S.C. § 1102(a)(3) to not appoint any creditors' committees.

16. Debtor requests that a Preliminary hearing on this motion be held at the earliest possible date convenient to the Court's and parties' calendars.

WHEREFORE, Debtor prays that this Honorable Court provide the following relief:

1. Set a hearing on this Motion at the earliest possible date available on the Court's docket.

2. At the time of said hearing, authorize Debtor to use above referenced cash collateral for the payment of expenses the Debtor incurs in the ordinary course of its business and in accordance with Debtor's budget attached hereto as Exhibit "E;"

3. Grant GWB as adequate protection for use of its cash collateral, the value of the Premises and of the Collateral;

4. At the time of said hearing, authorize Debtor's use of cash collateral in the ordinary course of its business upon the terms referenced herein; and

5. Direct such other and further relief as is appropriate under the circumstances.

THE SADER LAW FIRM

By: /s/ Meredyth A. Vick

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Emergency Motion Seeking Authorization to Use Cash Collateral was forwarded this 20<sup>th</sup> day of October, 2010, by first class mail, postage prepaid, to those on the attached creditor matrix, and those listed below, as well as to those on ECF.

U.S. Trustee  
Attn: Mr. Daniel J. Casamatta  
Room 3440  
400 East 9th Street  
Kansas City, MO 64106-1910

Great Western Bank  
c/o McAnany, VanCleave & Phillips  
Attn: Mr. George D. Halper  
5125 Roe Blvd., Ste 200  
Roeland Park, KS 66205

Great Western Bank  
c/o McAnany, Van Cleave & Phillips  
Attn: Mr. Joseph W. Hemberger  
5125 Roe Blvd, Suite 200  
Roeland Park, KS 66205

Great Western Bank  
10610 Shawnee Mission Parkway  
Shawnee, Kansas 66203

/s/ Meredyth A. Vick  
Meredyth A. Vick, Attorney

CED Constructive Engineering Design Inc.  
 Attn: Michael J. Farrahi  
 9091 State Line Road, Suite 300  
 Kansas City MO 64114-3290

Document Page 6 of 6  
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 10 Petticoat Lane, Suite 250  
 Kansas City MO 64106

EDC Loan Corporation  
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 McAnany Van Cleave & Phillips P.A.  
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Great Western Bank (Shawnee)  
 10610 Shawnee Mission Parkway  
 Shawnee KS 66203

Jackson County Collector  
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